

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF ISSAQUAH**

In the Matter of the Application of	)	No.	PLN09-00065
	)		PLN07-00003
	)		
<b>Joseph Amedson</b>	)	<b>Forest Heights Subdivision</b>	
	)		
For Approval of a Preliminary Plat and	)	FINDINGS, CONCLUSIONS,	
<u>Clustered Housing Development Agreement</u> )		AND RECOMMENDATION	

**SUMMARY OF RECOMMENDATION**

The Hearing Examiner recommends that the request for a preliminary plat and clustered housing development agreement to subdivide approximately 13.9 acres into 24 single family lots with nine tracts for native growth protection easements, common open space, stormwater detention, and future development be **APPROVED**. Conditions of approval are necessary to mitigate specific impacts of proposed development.

**SUMMARY OF RECORD**

Request:

Joseph Amedson requests a preliminary plat and clustered housing development agreement to subdivide approximately 13.9 acres into 24 single family lots with nine tracts for native growth protection easements, common open space, stormwater detention, and future development. The property is located north and east of the Talus (formerly East Village) development, south of NW James Bush Road, and west of 17<sup>th</sup> Avenue NW in Issaquah, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on March 29, 2012. The Hearing Examiner kept the record open until close of business March 30, 2012 for the Applicant to submit an access and traffic agreement between the Applicant and owners of the Talus development.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Jerry Lind, City Planner  
Ryan Coleman, AICP Planner, Triad Associates, Applicant Representative  
Todd Christiansen, City Public Works  
Rick Tomkins, P.E., Triad Associates, Applicant Representative  
Charlie Kahle  
Janice Kunc  
Wendy Logan

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Cindy Uribe  
Beth Lanning  
Bruce Wendt  
Julie Clark  
Joseph Amedson, Applicant

Exhibits:

The following exhibits were admitted into the record:

City Staff Report, dated March 29, 2012, with the following exhibits:

1. Preliminary Plat application, PLN09-00065 (2 pages), received October 15, 2009
2. Clustered Housing/Development Agreement application (2 pages), PLN07-00003, received January 7, 2007 (with Community Conference application), and application updated on December 30, 2009
3. Legal description, received October 15, 2009
4. Affidavit of Agent Authority/Ownership, received October 15, 2009
5. Vicinity map
6. King County Assessor Map
7. Project narrative for Preliminary Plat & Clustered Housing /Development Agreement (4 pages), received December 24, 2009
8. Notice of Complete Application and public comment notice, dated February 3, 2010
9. Notice to surrounding property owners of public hearing, March 14, 2012
10. Notice of public hearing in Issaquah Press, March 14, 2012
11. Certificate of Transportation Concurrence, Application CON09-00004, issued January 29, 2009
12. Certificate of Water Supply Availability, Application WSA09-00002, issued January 29, 2009
13. Environmental Checklist (19 pages), received October 15, 2009
14. SEPA Determination: MDNS (4 pages) issued February 22, 2012
15. Affidavit of SEPA Publication in Issaquah Press, dated February 22, 2012
16. Community Conference, Development Commission minutes, file PLN07-00002 (11 pages), dated May 2, 2007
17. Cluster housing standards and approval criteria, IMC 18.07.420 (4 pages)
18. Typical house types (elevations) proposed for Forest Heights (6 pages), sheets A1 to A6, received December 10, 2009
19. Cover sheet, legal description and project information, sheet 1 of 7, received November 22, 2011
20. Preliminary Plat, sheet 2 of 7, received November 22, 2011
21. Preliminary grading plan, sheet 3 of 7, received November 22, 2011
22. Preliminary utility plan, sheet 4 of 7, received November 22, 2011
23. Preliminary road profile, sheet 5 of 7, received November 22, 2011
24. Conceptual landscape plan, sheet 6 of 7, received November 22, 2011
25. Critical areas exhibit, sheet 7 of 7, received November 22, 2011

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26. Title Report from First American (11 pages), received June 13, 2011
27. Feasibility Geotechnical Investigation Report by Golder Associates, dated April 2006
28. Critical Areas Study, prepared by Talasaea Consultants, Inc. (14 pages) dated December 22, 2006, received January 5, 2007 and October 15, 2009
29. Addendum Report: Critical Areas Study, by Golder Associates (13 pages) dated May 3, 2011, received June 13, 2011
30. Critical Area Report Addendum, by Sewall Wetland Consulting, Inc. ( 16 pages) dated May 9, 2011, received June 13, 2011
31. Technical Information Report by Triad Associates, issued October 14, 2009, received October 15, 2009
32. Correspondence from Wanli Chen, received February 5, 2011
33. Correspondence from Steve Duffy, received February 5, 2011
34. Correspondence from Alan Portugal, received February 6, 2011
35. Correspondence from Judith Cushman, received February 8, 2011
36. Correspondence from Charlie Kahle, received February 9, 2011
37. Correspondence from Wayne Reingold, received February 9, 2011
38. Correspondence from Sean Logan, received February 9, 2011
39. Correspondence from Richard Ochs, received February 10, 2011
40. Correspondence from Diana Owen, received February 19, 2011
41. Correspondence from Jackie Siochi, received February 20, 2011
42. Correspondence from Judith Cushman, received February 25, 2011
43. Correspondence from Kevin Brintnall, received March 2, 2011
44. Correspondence from John Murphy, received March 8, 2011
45. Correspondence from Ron Dupuis, received April 20, 2011
46. Correspondence from Wayne Reingold, received June 2, 2011
47. Correspondence from Shawn McGrath, received May 9, 2011
48. Correspondence from Jessica Morgan, received July 18, 2011
49. Correspondence from Cynthia Uribe, received March 22, 2012
50. Correspondence from Matthew Robon, MD, received March 26, 2012
51. Correspondence from Cynthia Uribe, received March 27, 2012
52. Correspondence from Caleb and Kendra Hug, received March 27, 2012
53. Correspondence from Steve Duffy, received March 28, 2012
54. Cluster Housing Development Agreement between The City of Issaquah and Camwest Development, Inc., unsigned, received January 5, 2007
55. Memorandum from Brian Todd to Rick Peterson, dated September 12, 2000
56. Correspondence from Paul Boone, received March 29, 2012
57. "Agreement to Grant Easements," from Joseph Amedson, dated March 30, 2012

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

## FINDINGS

### Application and Notice

1. Joseph Amedson (Applicant) requests a preliminary plat and clustered housing<sup>1</sup> development agreement to subdivide approximately 13.9 acres into 24 single family lots with nine tracts for native growth protection easements, common open space, stormwater detention, and future development.<sup>2</sup> The property is located north and east of the Talus (formerly East Village) development, south of NW James Bush Road, and west of 17<sup>th</sup> Avenue NW in Issaquah, Washington.<sup>3</sup> *Staff Report, pages 1 to 2; Exhibit 1; Exhibit 2.*
2. The City of Issaquah (City) determined that the preliminary plat application was complete on January 7, 2010, and the clustered housing/development agreement application was complete on February 2, 2007. *Exhibit 8.* On February 3, 2010, the City mailed notice of the applications to parties of record and owners of property within 300 feet of the subject property. *Exhibit 8.* On March 14, 2012, the City also mailed notice of the associated open record hearing to parties of record and owners of property within 300 feet of the subject property. *Exhibit 9.* The City published notice of the hearing in *The Issaquah Press* on March 14, 2012. *Exhibit 10.* The Applicant installed a public notice hearing board on the subject property in November 2011. The City updated the board with hearing date and time on March 14, 2012. *Staff Report, page 20.*

### State Environmental Policy Act Review

3. The City acted as lead agency and analyzed the environmental impact of the proposal under the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. The City determined that with four conditions, the proposal would not have a probable significant adverse impact on the environment, and issued a Mitigated Determination of

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<sup>1</sup> Clustered housing is defined under the Issaquah Municipal Code (IMC) as "A development design technique that concentrates buildings housing in specific areas on a site to allow the remaining land to be used for common usable open space, and preservation of environmentally critical areas." According to the City code, cluster developments housing requires a minimum of two acres and must comply with the density and lot coverage requirements for the zoning district in which the parcel is located. However, to achieve the development clusters, minimum lot requirements, including, but not limited to, internal building setbacks may be flexible, provided, the land saved through clustering is dedicated to permanent usable open space areas or critical areas. Maintenance of usable open space and critical areas is the owner's responsibility unless other ownership provisions are made." *IMC 18.02.100.*

<sup>2</sup> A Development Agreement must be approved by the City Council prior to or concurrently with a plat decision and/or other land use decision located on commonly owned, contiguous parcels of land totaling five or more acres of land. Upon approval of a Development Agreement, the development shall be governed by the substantive provisions of the approved Agreement and implemented through subdivisions, short plats, binding site plans or other applicable permits. *IMC 18.07.420.C.*

<sup>3</sup> The subject property is identified by Tax Assessor Parcel No. 292406-9039. The property's legal description is found within the application. *Exhibit 1; Exhibit 2; Exhibit 3.* Jerry Lind, City Planner, testified that the proposed development is not part of the Talus development, and would not be governed by the development agreement that governs Talus. Mr. Lind added that the original Talus map showed the subject property as an "Expansion Area" but the subject property has never been made part of the Talus development. *Testimony of Mr. Lind.*

Nonsignificance (MDNS) on February 22, 2012. The four conditions concern City approval of a construction haul route before issue of construction permits, to minimize construction-related traffic impacts through the Talus neighborhood; avoidance of project impacts to the existing MSE retaining wall along the west property boundary;<sup>4</sup> planting of 29 conifer trees in the slope area in the east portion of the site before final plat approval; and payment of mitigation for potential impacts on public services, including General Government Buildings Mitigation Fee and Police Mitigation Fee. As a result of public comments received, the City modified SEPA mitigation on March 14, 2012, to increase the number of conifer trees to be planted from 29 to 35. *Staff Report, page 11; Exhibit 14.*

#### Comprehensive Plan and Zoning

4. The subject property is designated Low Density Residential/Urban Village and Low Density Residential by the City Comprehensive Plan. *City Comprehensive Plan, Figure 1 – Land Use Designation Map (effective January 16, 2012).* The purpose and intent of the Low Density Residential designation is to provide a variety of housing types and densities within a full range of urban services. The primary use in the designation is housing, and the appropriate density of the individual residential zoning districts is based on the availability of urban services and the proximity to local streets, arterials and pedestrian access. The purpose and intent of the Urban Village designation is to encourage innovative uses, sites, and comprehensive planning of large land parcels to provide opportunities for reasonably priced housing, enhanced public services and concurrency, infrastructure solutions and improvements, and creative land development through clustering, permanent preservation of wetlands and other natural areas, integration of recreational facilities and phasing of infrastructure. *City Comprehensive Plan, Land Use Element, Table L-3 – Land Use Designations, page L-11 (2011).*
5. Comprehensive Plan policies and objectives are relevant to the proposed development. Housing Element policies and objectives encourage a variety of housing types and lot sizes such as clustered housing development; encourage affordable housing development and flexible lot sizes and subdivision requirements; promote housing safety and environmental protection by locating housing away from environmentally sensitive areas and incompatible uses; and maintain the character and scale of the housing and neighborhoods located on Squak Mountain, Cougar Mountain, Tiger Mountain, and the Plateau. *Comprehensive Plan, Housing Element, pages H-5 to H-7 and H-10.* Land Use Element policies require clustering of buildings within developments to provide the maximum consolidated pervious surface, open space, efficient extension of urban services, and protection of critical area and their buffers. Land Use Element policies also

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<sup>4</sup> “MSE” means “mechanically stabilized earth.” MSE retaining walls border the west boundary of the subject property and support house lots for development within Talus. The MSE walls are approximately 675 feet long and up to 25 feet in height. A soldier pile retaining wall is also located along the east side of NW James Bush Road and supports a cut slope on the underside of the road. The soldier pile wall is 6 to 15 feet in height and approximately 230 feet long. *Exhibit 29.*

call for protecting the existing character and scale of the City's neighborhoods by maintaining compatibility with existing neighborhood character and scale through development standards. *City Comprehensive Plan, Land Use Element, pages L-13 and L-17.*

6. The subject property is located within the City's Single Family Suburban (SF-S) zoning district. *Staff Report, page 2.* The primary purpose of this district is to provide for single family neighborhoods in an urban setting while buffering these neighborhoods from commercial services. Permitted uses include detached single family homes. Recreational uses which serve the neighborhood are also permitted as governed by the Table of Permitted Land Uses; provided, that traffic and other related impacts are not detrimental to the district. *Issaquah Municipal Code (IMC) 18.06.100.C.* The objectives of the district are to establish and preserve residential neighborhoods for detached single-family units free from other uses except those compatible with and serving district residents; discourage through arterial traffic that does not serve the affected single family neighborhood; and provide opportunity for single family residential development in areas served by public and urban services. *IMC 18.06.100.C.1 - C.3.*
7. The maximum development density allowed within the SF-S zoning district is 4.5 dwelling units per acre (du/ac). *IMC 18.07.360.* Overall density must not exceed the density of the underlying zoning district. *IMC 18.07.420.B.2.* Cluster housing standards provide for achieving the maximum allowable density on developable land while preserving critical areas and other pervious surfaces through lot reduction. Cluster housing standards also provide more common usable and native forested open space within cluster developments not part of a platted lot; encourage affordable housing through provision of smaller lots; and provide a more efficient arrangement of structures for providing services and infrastructure. *IMC 18.07.420.A.* There is no minimum lot size for individual units within the development; the overall cluster development must be at least two acres in size. *IMC 18.07.420.B.1.*
8. A development agreement must be approved by the City Council prior to or concurrently with a plat decision or other land use decision located on commonly owned, contiguous parcels of land totaling five or more acres of land. *IMC 18.07.420.C.* A development agreement may deviate from underlying zoning district standards to achieve a conceptual site plan; open space and recreational facilities; preservation of critical areas and buffers; residential uses; site design, bulk or building standards; and capital facilities, public services or facilities, but density and permitted uses cannot differ from underlying zoning standards. *IMC 18.07.420.C.1 and C.3.* Jerry Lind, City Planner, testified that material presented as Exhibit 54 is an example of development agreement format, and material presented as Exhibit 7 speaks to the content of a development agreement for the proposed development. *IMC 18.07.420.C.1* requires that each Development Agreement approved by the City Council shall include the following components: project description and conceptual site plan; open space and recreation lands and facilities, including critical area

and buffer preservation; residential uses, densities and affordable housing; site design, bulk standards, and building standards; and a capital facilities plan showing infrastructure such as road improvements, transportation management plans, utilities, schools, police and fire and any other public services or facilities. Mr. Lind testified that a development agreement is needed for the proposed development to detail density calculation, critical areas, open space, and affordable housing. *Testimony of Mr. Lind.*

#### Surrounding Property

9. The subject property is wedge-shaped and bounded by NW James Bush Road to the north and east. NW James Bush Road slopes downhill east of the subject property. Property further to the east contains undeveloped land and SR 900, with single-family residential property at the bottom of the hill along NW James Bush Road. The Talus single-family residential development lies adjacent to the west and south. Streets within the Talus development in the vicinity of the subject property include Big Tree Drive NW; NW Surprise Creek Lane; Bear Ridge Drive NW; Shangri-La Way NW; and Wilderness Peak Drive NW. Property to the north is undeveloped and contains the Westside reservoir. Property to the north and east of the subject property is located in the City's SF-S zoning district, and property to the south and west is designated Urban Village – East Village (Talus). *Staff Report, pages 2 and 4; Exhibit 5; Exhibit 6; Exhibit 13; Exhibit 19.*

#### Project Proposal

10. The subject property is divided into an upper portion of the site approximately 6.04 acres in size and a lower portion of the site approximately 7.86 acres in size. The property is currently undeveloped and consists of forest land. An existing 22-foot wide utility easement roughly bisects the property on the north-south axis, creating a rough division between the upper portion and the lower portion of the site.<sup>5</sup> The utility easement contains an unimproved gravel roadway. The utility easement turns west and extends into the neighboring Talus development in the upper portion of the subject property. The Applicant's Feasibility Geotechnical Investigation report, prepared by Golder Associates, dated April 2006, states that the utility corridor road was constructed during development of Talus Parcels 5C and 5D. *Staff Report, pages 3 to 4; Exhibit 19; Exhibit 27.*
11. As proposed, 24 single-family residential lots ranging from 2,990 square feet to 4,911 square feet in size would be developed within the upper portion of the site. Conceptual building footprints are depicted on the proposed preliminary plat map. The lots would be accessed by proposed Road A, which would be a public road. Proposed Road A would extend south from NW James Bush Road to provide access to proposed residential lots, terminating in a loop within the proposed subdivision. Proposed Road A would overlap the existing utility easement that runs north-south through the subject property. According to the City staff report, proposed development would not compromise views to the surrounding hillsides in the City. *Staff Report, page 16; Exhibit 19.*

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<sup>5</sup> The easement is recorded with the County under Recording No. 20051212001238. *Exhibit 19.*

12. The proposed development would include nine tracts: Tract A, B, C, D, E, F, G, H, and I. As proposed, Tract A (approximately 5,617 square feet in size) would be for stormwater detention and would be located adjacent to Road A, north of Lot 1, in the upper portion of the property. Tract B (approximately 6,731 square feet) would be for Common Usable Open Space and would be located adjacent to the west of Road A, to the north of Lot 3. Tract C (approximately 21,616 square feet) would also be for Common Usable Open Space and located in the southwest corner of the upper portion of the subject property. Lots 21, 22, 23, and 24 would be located to the east and north of Tract C. Tract D (approximately 10,178 square feet) would be for stormwater detention and located west of the existing utility easement and east of proposed Lot 24. Tract E would be a Native Growth Protection Area (NGPA) approximately 3,799 square feet and located within Tract F in the southeast corner of the upper portion of the subject property. Tract F (approximately 47,092 square feet) would extend along the upper portion's east boundary, east of Road A, and would be for Common Usable Open Space. Tract G, a NGPA measuring approximately 5,598 square feet, would be located adjacent to the north of Tract F and east of Road A. Tract H, a NPGA measuring approximately 17,794 square feet, would be located south of Tract A, north of Tract G, and east of Road A. Tract I (approximately 338, 143 square feet) is labeled "Future Development" and would be located outside the plat boundary on the proposed preliminary plat map. A note on the proposed preliminary plat map states "Plat boundary to be established through future short plat of Parcel 2924069039. Approval and recordation of short plat shall occur prior to final plat approval of Forest Heights." Mr. Lind testified that Tract I is not part of plat review. *Exhibit 19; Testimony of Mr. Lind.*
13. The subject property contains approximately 0.62 acres of critical area and associated buffers. Partial credit of the density within the area of critical area and buffer may be transferred to the developable portion of the subject property under IMC 18.10.450(B)(2).<sup>6</sup> With allowable density transfer, development of a maximum of 26 residential dwelling units is allowed on the subject property.<sup>7</sup> *Staff Report, page 5.*
14. Proposed front yard setbacks within residential lots would be 10 feet wide adjacent to a residence and 20 feet wide adjacent to a garage. Side and rear yard setbacks would be five feet wide. Proposed setbacks and square footage of individual lots would be

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<sup>6</sup> For residential development, the maximum number of dwelling units (du) for a lot or parcel which contains critical areas and associated critical area buffers that limit development shall be equal to the number of acres in critical area and critical area buffer that limit development, times the number of dwelling units allowed per acre, times the percentage of density credit, plus the number of dwelling units allowed on the remainder of the site; or: (Max. du) = (acres in critical area and critical area buffer) (du/acre) (Density Credit) + (du allowed on remaining acreage of site). *IMC 18.10.450.B.1.*

<sup>7</sup> The density calculation is: 5.42 acres outside critical area \* 4.5 du/acre = 24.39 du; 0.62 acres in critical area and buffers \* 4.5 du/acre \* 80-percent credit = 2.23 du. 24.39 du + 2.23 du = 26.61 du.



governed by the development agreement subject to City Council approval. According to the City staff report, the actual individual setbacks and pervious/impervious ratios on each lot would be determined with City review of Building Permit applications, but would be no less than those allowed by the development agreement. Mr. Lind testified that proposed interior lot setbacks are similar to those within the Talus development. *Staff Report, pages 5 to 6; Exhibit 19; Testimony of Mr. Lind.*

#### Critical Areas

15. A critical areas study prepared for CamWest Development, Inc. by Talasaea Consultants, Inc., dated December 22, 2006, delineated one wetland on the subject property. Wetland A, a Category IV wetland<sup>8</sup> approximately 897 square feet in size, is located in the northwest corner of the upper portion of the subject property. Another critical areas study prepared for the Applicant by Sewall Wetland Consulting, Inc., dated May 9, 2011, verified the size, location, and Category rating of Wetland A on the subject property. The Sewall study found another wetland on the property, Wetland B, a Category IV wetland approximately 2,000 feet in size located along the west side of the utility easement road. *Exhibit 28; Exhibit 30.* The City critical areas code does not regulate activity within or provide for buffers to protect Category IV wetlands less than 2,500 square feet in size. *See IMC 18.10.620.A.1.d; IMC Table 18.10.640.C.*
16. Both of the wetlands on the site would be filled to construct Road A. To further the goal of no net loss of wetland functions or values, in order of preference, activities and development on sites containing wetlands shall: avoid impacts to the wetland and buffer; minimize impacts to the wetland and buffer; and compensate for impacts by restoring, creating, or enhancing substitute resources or environments. *IMC 18.10.670.* As proposed, the Applicant would mitigate for wetland fill by planting native conifer shrubs within and adjacent to the north of proposed NGPA Tract G. Mitigation would add a conifer component to an area of deciduous forest with no current conifer component. *Exhibit 19; Exhibit 30.*
17. The subject property generally slopes to the east. The west portion of the property contains gently sloping land and the middle portion contains slopes ranging from 25- to 40-percent grade. The steepest slopes of 40-percent or greater grade are located within the east portion of the subject property. *Exhibit 13; Exhibit 29.*
18. According to the Applicant's Addendum Report Critical Areas Study prepared by Golder Associates, dated May 3, 2011, there are eight sloping areas on the property that are

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<sup>8</sup> Category IV wetlands are those wetlands that provide the lowest level of functions and are often heavily disturbed. Category IV wetlands score less than 30 points under the Western Washington Wetland Rating System. *IMC 18.10.620.A.1.d.*

defined as steep slope hazard areas under the City critical areas code.<sup>9</sup> Five slope areas have less than 20 feet of vertical relief; three have more than 20 feet and are distinguished as Slope A, Slope B, and Slope C. IMC 18.10.580 requires a minimum buffer extending at least 50 feet from the top or toe and along all sides of slopes to protect steep slope hazard areas, and requires maintenance of existing vegetation within the buffer area. The buffer may be reduced to a minimum of 10 feet wide if the Applicant demonstrates to the City, pursuant to a critical area study, that the reduction would not reduce the level of protection to the proposed development and the critical area as otherwise provided by the 50-foot wide buffer. *IMC 18.10.580.A.2.* A proposed retaining wall up to seven feet in height would be located within the 50-foot buffer for Slopes B and C. Another retaining wall would be constructed near Slope A that would be approximately 10 feet in height. The Golder study concluded that reducing the standard buffer from 50-feet wide to 10-feet wide from the top and sides of the steep slope in the Slope A, B, and C areas would not reduce the level of protection. The City Staff report states that further geotechnical analysis will be required with Building Permit application review when individual lots are being developed. As proposed, Slope A, B, and C areas would be protected within NGPA Tracts E, G, and H. *Staff Report, page 9; Exhibit 19; Exhibit 29.*

#### Cluster Housing Development and Design Standards

19. Cluster development shall have a minimum of 15-percent of the net site area as common usable open space, and pervious and impervious surface requirements are equal to the underlying zone for the gross site. *IMC 18.07.420.B.4.* According to the City staff report, the subject property has a net site area of approximately 179,411 square feet, and the proposed development would provide approximately 75,421 square feet as usable open space, or 42 percent of the subject property. *Staff Report, page 14.* Within the SF-S zoning district, 60 percent pervious area is required. *IMC 18.07.360.* The City staff report states the proposed development would meet the minimum pervious area requirement through proposed usable open space, critical areas, critical areas buffers, stormwater detention areas, and remaining pervious land on lots proposed for development. *Staff Report, page 14.*
20. A landscape plan must be submitted for residential projects developed as a cluster development, including landscaping of all building setbacks and internal areas between buildings except for ingress and egress; landscaping in the exterior periphery yards of a cluster development; and landscaping in the minimum pervious areas established by the underlying zone. *IMC 18.07.420.B.5.* The conceptual landscape plan submitted with the applications depicts lawn play areas and stormwater detention areas, existing vegetation to remain within NGPA and common usable open space areas, street trees, small scale ornamental trees, coniferous trees, shrubs, ground covers and perennials. The conceptual plan also includes proposed wetland mitigation. Minimum pervious areas are depicted as

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<sup>9</sup> IMC 18.10.390 defines a steep slope hazard area as “[a]ny ground that rises at an inclination of forty (40) percent or more within a vertical elevation change of at least ten (10) feet (a vertical rise of ten (10) feet or more for every twenty-five (25) feet of horizontal distance).”

fully landscaped. According to the City staff report, a final landscaping plan will need to be approved by the Planning Department prior to implementation and construction drawings reviewed under a Public Works permit application. *Staff Report, page 15; Exhibit 19.*

#### Stormwater

21. The source of stormwater runoff on the subject property is precipitation and discharge from underdrains that daylight along the toe of the MSE wall along the subject property's west boundary. Stormwater runoff is currently collected on-site in ditches on the upslope side of the utility easement road, conveyed across the road in culverts, and discharged along the crest of the slope. Runoff then flows easterly through heavy brush and tree litter into the NW James Bush Road conveyance system. The NW James Bush Road conveyance system carries runoff to the SR 900 conveyance system, which outlets to Tibbetts Creek. *Exhibit 29; Exhibit 31.*
22. Stormwater runoff from the developed site would be collected and detained through pipes and catch basins in two combined detention/water quality vaults. One vault would be located within proposed Tract A and the other within proposed Tract D. Water quality treatment would occur through dead storage. Similar to pre-developed conditions, the vaults would discharge flow at a controlled release rate in forested conditions at the east edge of the subject property. Discharged stormwater would then flow into the NW James Bush Road conveyance system. A portion of the subject property that cannot drain to the detention vaults by gravity flow would be treated for water quality by a stormwater filter before discharging into the NW James Bush Road conveyance system. *Exhibit 19; Exhibit 31.*

#### Utilities and Services

23. The proposed development would be served by the Issaquah School District, Issaquah Police Department, and Issaquah Fire District 10. The Issaquah Transit Center is located northeast of the proposed development at the northeast corner of the SR 900 and Newport Way intersection. According to the City staff report, the City will ensure two on-site parking spots are required per residence during City building permit review. The City issued a Certificate of Water Supply for 32 single-family structures, or 32 Equivalent Residential Units (ERUs) on January 28, 2009, effective for 180 days from issue. An eight-inch wide water main would run down the new roadway for connection by new residences. Fire hydrants would be located in four locations: within proposed Tract A; east of Road A and Lot 4; in the northeast corner of the property; and west of Lot 17. The preliminary utilities plan depicts an existing 36-inch wide sanitary sewer line within the existing utilities easement on the subject property. According to the City staff report, appropriate provision is made within the proposed development for potable water supplies, sanitary sewer, fire hydrant, and storm water drainage. *Staff Report, pages 8, 10 to 11 and 16; Exhibit 12; Exhibit 19.*

#### *Findings, Conclusions, and Recommendation*

*City of Issaquah Hearing Examiner*

*Forest Heights Preliminary Plat and Clustered Housing/Development Agreement*

*PLN09-00065/PLN07-00003*

#### Traffic and Access

24. As depicted on the preliminary site plan, proposed development would be accessed through the Talus neighborhood over Big Tree Drive NW. Existing pavement connects Big Tree Drive NW to NW James Bush Road, which would then connect to proposed Road A within the new subdivision. A five-foot wide pedestrian sidewalk would be constructed on one side of NW James Bush Road from Big Tree Drive NW to proposed Road A, and connect to sidewalk that would be constructed along one side of Road A.<sup>10</sup> As proposed, Road A would consist of a 34.5-foot wide ROW and 25-foot wide pavement. Street lighting would be installed similar to that used within the Talus development. West of the Road A connection, NW James Bush Road would consist of a 32-foot wide ROW and 20-foot wide pavement. East of the Road A connection, the preliminary site plan states that NW James Bush Road consists of a 30-foot wide ROW, "per agreement with City of Issaquah" and roadway less than 20 feet wide. A locking swing gate would prohibit vehicle access from the developed site to eastbound NW James Bush Road. According to the City staff report, access to eastbound NW James Bush Road would be emergency access only. The existing gate at the top of NW James Bush Road would be relocated eastward on the road to allow access into the proposed subdivision. *Staff Report, page 8; Exhibit 19.*
25. Proposed development of 24 residential lots would generate approximately 24.2 P.M. peak hour vehicle trips. The City issued a Certificate of Transportation Concurrency on January 29, 2009 for an earlier proposal to develop 50 single-family residences on the subject property that would generate approximately 42 P.M. peak hour vehicle trips. According to the MDNS, vehicle trips generated by proposed development at the P.M. peak hour would be less than one-percent of the maximum number of peak hour traffic trips approved for full development of Talus. *Staff Report, page 8; Exhibit 11; Exhibit 14.*
26. The proposed preliminary plat map depicts a four-foot wide wood chip trail located roughly parallel to the south boundary of the subject property. The proposed subdivision would include a pedestrian access easement for a trail connection across the southwest corner of the subject property. Harvey Manning Park, approximately 10 acres in size, is located at 919 Bear Ridge Court and within walking distance of the proposed subdivision. *Staff Report, page 11; Exhibit 19.*

#### Staff Recommendation

##### Public Comment, and Applicant Response

27. Mr. Lind testified that City staff recommends approval of the preliminary plat request and clustered housing/development agreement request, with 26 proposed conditions of approval. Proposed conditions of approval concern compliance with SEPA conditions; depiction of critical area, critical area buffer and building setback, and Native Growth

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<sup>10</sup> The City staff report states the proposal for sidewalk along one side of the road has been determined to be acceptable by the City Public Works Engineering Department. *Staff Report, page 8.*

Protection Easement (NGPE) on the final plat map; City indemnity for development within 50 feet of steep slopes; compliance with an approved Development Agreement; establishment of a homeowners association for maintenance of shared common areas; affordable housing provision; payment of impact fees; and conditions required by the City Public Works Engineering Department, Fire Department, and Parks Department. *Staff Report, pages 20 to 23; Testimony of Mr. Lind.*

28. The City received 23 public comment letters and emails on the proposed development. Some requested to become a party of record concerning the project. Others inquired about water sources for the proposed development; access through the Talus development rather than through NW James Bush Road; traffic impacts; construction noise and access through NW James Bush Road; stormwater runoff; utilities; the number of existing houses already for sale in the City; use of the subject property by the Talus community for children and dogs; concern about wildlife and trees on the subject property; infrastructure impacts; protection of the existing Talus retaining wall; crime concern; safety of narrow streets with increase in traffic; decrease in property values; housing density; steep slopes; parking on Talus streets; and impact on City tree removal policy. *Exhibits 32 to 53 and 56.*
29. Charles Kahle testified that sidewalks or a pedestrian walkway should be constructed along NW James Bush Road, as there currently are none, and inquired how the Talus development would be expected to absorb impacts of proposed development especially on the Talus trail and park system. Mr. Kahle testified that the proposed development should become a part of the Talus homeowners' association, in part to ensure a contribution toward maintenance of the Talus Park that would be used by residents of the proposed subdivision. Mr. Lind responded for the City that there is currently no plan for a sidewalk along NW James Bush Road, and the road will continue to be a low traffic area and very safe because the road will be gated to prevent vehicle access. Beth Lanning also testified to request help to maintain the Talus Park, as it is located approximately a block away from the proposed development. Mr. Lind added that City park impact fees go to all parks, and cannot be targeted for a single park maintained by a homeowners association. *Testimony of Mr. Kahle; Testimony of Mr. Lind; Testimony of Ms. Lanning.*
30. Janice Kunc testified to inquire where the construction haul route referenced in the MDNS conditions would be located. Mr. Lind responded for the City that the MDNS states construction traffic should use NW James Bush Road when feasible, although some construction equipment may not be able to use the road due to road grades and turning radius. Wendy Logan testified to request sidewalks, restrictions on truck use, or at least a separate pathway for pedestrians on NW James Bush Road. Ms. Logan testified that pedestrians currently use NW James Bush Road to walk between existing homes, shopping, transit and related services. Ms. Lanning testified that schoolchildren use NW

James Bush Road to walk to buses. *Exhibit 14; Testimony of Ms. Kunc; Testimony of Mr. Lind; Testimony of Ms. Lanning.*

31. Ms. Logan also testified that earth movement associated with proposed development could disrupt the existing retaining wall supporting her property. Ms. Logan requested an easement be granted to allow her to go on adjoining property to repair and maintain the existing retaining wall. Ms. Logan added there have been active mudslides in the vicinity, and that she is also concerned for tree protection on the subject property. Mr. Lind responded for the City that the proposed project vested before the City's tree protection ordinance was adopted, so the ordinance does not apply to the proposed development. *Testimony of Ms. Logan; Testimony of Mr. Lind.*
32. Cindy Uribe, a resident with a home on Big Tree Drive in Talus, testified that Talus roads should not be used for construction access to the subject property, especially on Mondays during garbage pick-up. Ms. Uribe also testified that NW James Bush Road should be improved to provide access to the proposed development rather than Big Tree Drive, to prevent vehicles associated with new residences or construction workers from parking along Big Tree Drive. Bruce Wendt testified that, in fairness, the proposed subdivision should not take advantage of roads and parks paid for by the Talus development, and proposed subdivision access and parking should be changed to NW James Bush Road, with its 60-foot wide ROW. Julie Clark also testified in favor of NW James Bush Road as access for the proposed subdivision. *Testimony of Ms. Uribe; Testimony of Mr. Wendt; Testimony of Ms. Clark.*
33. Ryan Coleman, Applicant Representative, testified that NW James Bush Road is a public street, so it is the City's decision whether or not to improve the road. Mr. Coleman testified that the road is narrow and steep with sharp curves and may be difficult to grade to an appropriate access road. *Testimony of Mr. Coleman.*
34. A City memorandum dated September 12, 2000 concerns the scope of the City's property interest in NW James Bush Road and the ability to widen the road beyond its current width. The memorandum concluded that the City has a strong argument that it owns a 60-foot wide ROW extending 30 feet on either side of the NW James Bush Road centerline as currently constructed, based on the mutual recognition doctrine, acquiescence, and adjacent property owners' long-time recognition that the 60-foot wide ROW is the actual boundary of their property. Todd Christiansen, City Public Works Engineering Department, testified that the use of the road controls over any survey map. *Exhibit 55; Testimony of Mr. Christiansen.*
35. Joseph Amedson (Applicant) testified that he would consider allowing the proposed subdivision to become part of the Talus homeowners' association so that proposed subdivision residents could use the existing Talus Park without trespassing. Mr.

Amedson testified he would submit an existing agreement with the Talus development concerning traffic for the record. *Testimony of Mr. Amedson.*

36. The Applicant submitted an Agreement to Grant Easements between Oly/Intracorp General Partnership<sup>11</sup> and the Applicant. The Agreement states that the Applicant shall deliver a signed and notarized utility easement to Oly/Intracorp no later than February 1, 2001. The utility easement attached to the Agreement is identified by County Recording Number 20010314000421 and grants a perpetual, non-exclusive easement for utilities in an easement area described legally in an attachment to the Agreement and roughly in the same location as the existing utility access road across the subject property. The Agreement also states:

Amedson agrees to grant to Oly/Intracorp such further easements as are necessary for Oly/Intracorp to make improvements to that portion of James Bush Road located on the property owned by Amedson ("Amedson's Property"), and to construct and maintain utilities under James Bush Road. Amedson also agrees to grant to Oly/Intracorp a construction easement, for the sole purpose of constructing a retaining wall, adjacent to the SW corner of Amedson Property. This construction easement to be granted only if a Slope Easement is not agreed upon. Access to construction easement to be agreed upon by Grantor and Grantee at such time that it is necessary. Oly/Intracorp will grant Amedson access to the Amedson Property through East Village and over that portion of James Bush Road located on the property owned by Oly/Intracorp adjacent to the Amedson Property. Oly/Intracorp agrees to grant to Amedson such easements as are necessary to complete the connection to James Bush Road at the East Village property line. Any easements granted under this section will be legally described at such time it is requested and identified.

No easements, recorded or otherwise, beyond the utilities easement are attached to the Agreement. The only easements depicted on the proposed preliminary plat map are a utilities easement, Recording No. 20051212001238, in which the existing gravel road is located on the subject property, and utilities easement Recording No. 20070112000593, adjacent to the north boundary of the subject property. *Exhibit 19; Exhibit 57.*

37. Mr. Coleman testified that the Applicant has read, understands, and agrees with proposed conditions of approval, as they may be modified by the Hearing Examiner according to findings and conclusions based on the record. Mr. Coleman requested that proposed Condition No. 15 concerning eight-inch wide sewer mains be deleted. Mr. Coleman testified the proposed development has been reviewed and approved by the City Planning Commission.<sup>12</sup> Mr. Coleman added that proposed affordable housing meets the required

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<sup>11</sup> Oly/Intracorp General Partnership owns the Talus development. *Exhibit 57.*

<sup>12</sup> Exhibit 16 includes the City Development Commission minutes of May 2, 2007, when citizens, Development Commission members, and representatives of the developer CamWest discussed proposed development of 25 single-family residential lots and 6 tracts for open space, stormwater detention, and recreation on the subject

ratio, set in relation to the entire city, and that the cost of the housing is determined by ARCH according to median income. *Testimony of Mr. Coleman.*

## **CONCLUSIONS**

### Jurisdiction

The Hearing Examiner has jurisdiction to hold a hearing on a preliminary plat application and, after review of the preliminary plat, Planning Department recommendation, testimony, and exhibits submitted at the hearing, may approve, conditionally approve, or disapprove the preliminary plat. *Issaquah Municipal Code (IMC) 18.03.060.B; 18.03.170; 18.04.490.C.1; 18.13.140.*

The City Council is authorized to hear and decide Cluster Housing Development Agreements. *IMC Table 18.04.100-1; IMC 18.04.220.* If a project action requires project permits from more than one category, applications shall be reviewed in a consolidated manner with a single open record hearing, and the decision-maker of the highest level of review shall decide all permits. *IMC 18.04.160.A.2.* Thus, the Hearing Examiner shall make a recommendation to the City Council on the preliminary plat and clustered housing development agreement applications.

### Criteria for Review

#### Preliminary Plat

According to IMC 18.04.480 and 18.04.490.C.1, preliminary plat proposals are reviewed through the Level 4 review process and shall comply with all the standards and criteria set forth in IMC Chapter 18.13. The standards and criteria regarding preliminary plats set forth in IMC Chapter 18.13 are established to promote the orderly and efficient division and re-division of land within the City; avoid placing undue and unnecessary burdens on both the applicant and the City; and to promote the public health and general welfare, complying with the provisions of RCW Chapter 58.17. The criteria for review of a preliminary plat are set forth in RCW 58.17.110(2) as follows:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that:

- (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
  - (b) The public use and interest will be served by the platting of such subdivision and dedication.
- RCW 58.17.110(2).*

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property. *Exhibit 16.* According to the City staff report, a Community Conference application submittal was made on January 5, 2007 (File No. PLN07-00002), and a public meeting was held with the Development Commission on May 2, 2007. *Staff Report, page 3.*

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Prior to any approval of the preliminary plat, all minimum street and utility improvements or reasonable conditions deemed necessary to fulfill the purpose of the subdivision code shall be specified by the Hearing Examiner and the applicant shall be advised of such. *IMC 18.13.140.B.*

#### *Clustered Housing Development Agreement*

Provisions for lot size adjustment are defined within the District Standards Table, IMC 18.07.360. Review for cluster development approval shall occur within the existing procedure required for the application. Approval for a cluster development shall be granted only if all the following criteria are met:

1. Minimum Area: A minimum of two (2) acres is required for a cluster development; however, there is no minimum lot size for individual units within the development.
2. Density: Overall density must not exceed density of underlying zoning district.
3. Consistency with Policies: The proposed development will be consistent with the general purpose, goals, objectives, and standards of the Comprehensive Plan, the City's subdivision regulations (Chapter 18.13 IMC), this Code and all other pertinent rules or regulations, whether local, state or federal.
4. Development Standards: Required development and design standards for cluster housing are established in the District Standards Table (IMC 18.07.360), and based upon the underlying district standards for the parcel.
  - a. Critical Areas: When critical areas are present, such critical areas and their buffers shall be used to calculate the pervious surface requirement. Environmentally constrained land shall not be used for subdivision of individual lots, and shall be held in a critical area tract or other protection method.
  - b. Common Usable Open Space: The cluster development shall have a minimum of fifteen (15) percent of the net site area as common usable open space.
  - c. Setbacks at exterior site boundaries, where the zoning is different than the abutting zoning, shall be the greater of the setback required by the site's zoning or the setback required by the adjacent zoning. There are no minimum interior setbacks, except those established by other requirements, such as building code, easements and critical areas.
  - d. Pervious and impervious surface requirements are equal to underlying zone for the gross site, prior to subdivision or other actions. There are no minimum requirements for pervious and impervious ratios on individual lots within the cluster development.
5. Landscape Plan: Residential projects developed as a cluster development (this section) shall be required to submit a landscape plan per IMC 18.12.070 and a Building Permit(s) shall not be issued until the landscaping plan has been approved. The landscaping plan shall be fully detailed as required by the provisions of the landscaping chapter and shall be subject to the approval of the Planning Director/Manager. Minimum standards for cluster development projects shall include:
  - a. Landscaping of all building setbacks and internal areas between buildings except for ingress and egress (driveways and sidewalks) shall be as required for multifamily residential uses in IMC 18.12.070, Schedule – General requirements by landscape type.

- b. Landscaping on the exterior periphery yards of a cluster development project shall include a combination of coniferous and deciduous trees, shrubs and ground cover.
  - c. The minimum pervious area established by the underlying zone of the clustered development shall be fully landscaped. Critical areas and their associated buffers (i.e., steep slopes, wetlands, etc.) retained or recreated as native forest may count towards the required pervious area and need not be landscaped. Enhancement of those critical areas, including critical area buffers, may be required if they are counted towards required buffering.
6. Impacts:
- a. Neighborhood: The proposed clustering of the development will not have a substantial adverse impact on adjacent property, the character of the neighborhood or community, traffic conditions, parking, utility facilities, or other elements affecting the public health, safety and general welfare.
  - b. Environment: The proposed cluster development will not result in the destruction, loss, or damage of any scenic corridor or Issaquah Treasure as identified in the City's Comprehensive Plan.
  - c. Services: The proposed cluster development will be adequately served by essential public facilities and services (such as highways, streets, parking spaces, police and fire protection, drainage structures, refuse disposal, water, sewers and schools) or the persons or agencies responsible for the establishment of the proposed use will adequately provide for such services.

IMC 18.07.420.

The criteria for review adopted by the Issaquah City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. RCW 36.70B.040.

### Conclusions Based on Findings

#### *Preliminary Plat*

1. **With conditions, appropriate provisions would be made for the public health, safety, and general welfare, and appropriate provisions would be made for open spaces, drainage ways, streets, transit stops, potable water supplies, sanitary wastes, parks and recreation, schools and school grounds and all other relevant facts.** The City gave adequate notice of the preliminary plat application and opportunity to comment. With four conditions, the City determined that the proposal would not have a probable adverse significant impact on the environment and issued a Mitigated Determination of Nonsignificance. Single-family residential development is an allowed use within the City's SF-S zoning district. The proposed subdivision would include tracts for common usable open space and NGPA tracts for critical areas protection. According to City staff testimony, proposed Tract I is not part of proposed development. *The Hearing Examiner recommends that the City Council consider a condition of preliminary plat approval requiring a note on the final plat map that Tract I is not approved for development.*

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Stormwater runoff would be collected in two detention vaults, treated for water quality, and discharged at pre-development release rates into the existing NW James Bush Road conveyance system, similar to the existing stormwater drainage pattern. A public loop road and adjacent sidewalk on one side of the road would provide access to residences within the proposed subdivision. Sidewalk along one side of upper NW James Bush Road would connect to existing sidewalk within the Talus subdivision. The Issaquah Transit Center is located northeast of the proposed development at the northeast corner of the SR 900 and Newport Way intersection. The proposed subdivision would obtain water service from the City and sanitary sewer from an existing main within a utility easement on the subject property. The subdivision would also be served by City schools, police, and fire protection services. MDNS conditions require payment of mitigation for potential impacts on public services. Conditions are necessary to ensure that parks, fire protection, general government, police and school impact fees are paid as necessary when building permits are issued for residences on each of the lots. Harvey Manning Park, approximately 10 acres in size, is located at 919 Bear Ridge Court and within walking distance of the proposed subdivision.

*The Hearing Examiner recommends the City Council consider additional conditions of approval. First, provision should be made for residents of lots within Talus supported by existing retaining walls to enter onto the subject property below the retaining walls for the purpose of maintaining the walls, to the extent required for safe support of the Talus property. The Hearing Examiner also recommends that the City Council consider a condition that NW James Bush Road should be used for construction haul traffic, unless the Applicant can show use of this road is not physically feasible for equipment and the City Planning Department approves an alternate route. Such a condition would limit construction impacts on the existing Talus residential subdivision, but allow for a possible alternate route if some construction equipment is not able to navigate steep slopes and sharp curves present along NW James Bush Road. A construction haul route through the Talus development would result in noise, dust and traffic impacts on the existing residential neighborhood and would interfere with garbage services on Mondays. If NW James Bush Road is designated the construction haul route, then the City Council should consider additional conditions of approval requiring construction workers to park offsite, avoiding NW James Bush Road and existing Talus roads, and construction of a pedestrian pathway along one side of NW James Bush Road, within City ROW, segregated from the roadway. NW James Bush Road is a narrow road extensively used by residents of the surrounding neighborhood to access transit and school buses, shopping, and related services. A segregated pedestrian pathway would protect pedestrians from construction vehicles using the roadway, and requiring offsite construction worker parking would ensure no interference with existing uses and construction vehicle access.*

Concerning use of Talus development streets to access the developed subdivision, the Hearing Examiner notes that the record does not include any easement granting this

access, recorded or otherwise, between Oly/Intracorp and the Applicant. While P.M. peak hour vehicle trips that would be generated by proposed development would be less than one-percent of similar trips approved by the City for the Talus development, the City Council may wish to inquire if an easement granting access exists and was recorded with the County. If no easement has been recorded and the City chooses not to improve NW James Bush Road for vehicle access beyond that associated with construction activity, there may not be a viable route for vehicle access to the proposed subdivision. *Findings 1, 3, 6, 9 – 12, 21 – 37.*

2. **With conditions, the public use and interest would be served by the platting of such subdivision and dedication.** Consistent with the City Comprehensive Plan, the proposed subdivision would provide single-family residential housing within a clustered housing development containing pervious surface, open space, and NGPA tracts to protect critical areas and buffers. Proposed setbacks would be consistent with setbacks within the adjacent Talus single-family residential development. Single-family residential development is an allowed use within the City's SF-S zoning district. With four conditions, the proposal would not have a probable significant adverse impact on the environment. Steep slope critical areas would be protected by buffers and building setbacks within NGPA tracts, and mitigation would be established on site for wetland impacts. *The Hearing Examiner recommends that the City Council consider additional conditions appropriate to ensure adequate construction vehicle access, safe pedestrian access, vehicle access to subdivision homes, and adequate construction and resident parking. Findings 1, 4 – 6, 9 – 13, 15 – 18, 20, 24 – 37.*

*Clustered Housing Development Agreement*

1. **IMC 18.07.420 minimum area standards have been met.** The subject property is at least two acres in size. *Finding 1.*
2. **IMC 18.07.420 density standards have been met.** Overall density will not exceed the maximum density allowed within the SF-S zoning district. *Findings 1, 7, 13.*
3. **With conditions, the proposed development would be consistent with the City Comprehensive Plan, subdivision regulations, City Code, and all other pertinent rules or regulations.** The proposed subdivision would provide single-family residential housing within a clustered housing development containing pervious surface, open space, and NGPA tracts to protect critical areas and buffers. Proposed setbacks would be consistent with setbacks within the adjacent Talus single-family residential development. Single-family residential development is an allowed use within the City's SF-S zoning district. Proposed development would not exceed maximum development density allowed within the SF-S zoning district. The proposed subdivision would meet cluster development requirements for usable open space and pervious surface. A development agreement approved by the City Council is necessary to govern the proposed subdivision, including density calculation, critical areas and buffers preservation, open space and

affordable housing provision, setbacks, site design, bulk or building standards, capital facilities, and public services. Conditions are necessary to ensure City review and approval of a final landscape plan; depiction of critical area, critical area buffer and building setback, and Native Growth Protection Easement (NGPE) on the final plat map; City indemnity for development within 50 feet of steep slopes; compliance with an approved Development Agreement; establishment of a homeowners association for maintenance of shared common areas; affordable housing provisions; payment of impact fees; and conditions required by the City Public Works Engineering Department, Fire Department, and Parks Department. *The Hearing Examiner also recommends the City Council consider including a clause within the Development Agreement providing for support of the Talus Park and trail system by the homeowners association to be established for the proposed subdivision, if residents of the proposed subdivision are allowed to use the Talus Park and trail system. Findings 1, 4 – 8, 10 – 29, 32, 35, 37.*

4. **With conditions, the proposed development would be consistent with required development and design standards for cluster housing established in IMC 18.07.360 and based on underlying district standards for the parcel.** Proposed development density would not exceed maximum development density allowed within the SF-S zoning district. The subject property is greater than two acres in size. Proposed development would meet the pervious surface requirement within the overall development and would contain common usable open space. Conditions are necessary to ensure that new homes on the lots meet development standards for setbacks within a City-approved Development Agreement and meet building height limits of the City land use code. *Findings 1, 7, 10 – 14, 19, 27.*
5. **A conceptual landscape plan has been submitted; a condition is necessary to ensure final landscaping plan review and approval by the City Planning Department prior to implementation.** *Finding 20.*
6. **With conditions, the proposed clustering of the development would not have a substantial adverse impact on adjacent property, the character of the neighborhood or community, traffic conditions, parking, utility facilities, or other elements affecting the public health, safety and general welfare.** The proposed subdivision would incorporate interior setbacks and single-family residential development similar to that existing within the adjacent Talus development. A sanitary sewer main located within an existing utility easement burdening the subject property would serve the proposed development. City schools, water, police and fire protection services would serve the proposed development. The City determined the proposed development would have no probable significant adverse impact on the environment. MDNS conditions and other conditions of approval are necessary to ensure payment of impact fees. Construction vehicle and construction worker vehicle traffic associated with proposed subdivision development would impact the road system surrounding the subject property and parking capacity within the road system. NW James Bush Road is narrow and steep

with significant curves. As proposed, residents of the proposed subdivision would access subdivision lots by roads within the Talus development, but a recorded easement granting such access is not a part of the record. *The Hearing Examiner recommends that the City Council consider additional conditions appropriate to ensure adequate construction vehicle access, safe pedestrian access, vehicle access to subdivision homes, and adequate construction and resident parking. The Hearing Examiner also recommends that the City Council consider an additional condition requiring an easement over the subject property for access to maintain existing retaining walls supporting Talus development homes. Findings 1, 3, 9 – 12, 14, 23 – 25, 27, 28, 30 – 37.*

7. **The proposed cluster development would not result in the destruction, loss, or damage of any scenic corridor or Issaquah Treasure as identified in the City Comprehensive Plan.** *Findings 5 and 11.*
8. **With conditions, the proposed cluster development would be adequately served by essential public facilities and services (such as highways, streets, parking spaces, police and fire protection, drainage structures, refuse disposal, water, sewers and schools) or the persons or agencies responsible for the establishment of the proposed use will adequately provide for such services.** The proposed development would include an internal loop road serving lots within the development and a stormwater detention and water quality system. The stormwater system would discharge at pre-development rates into the existing conveyance system within NW James Bush Road. The development would be served by City schools, water, police, and fire protection services. Two parking spaces are required per each residential lot within the development. Conditions are necessary to ensure City review and approval of a final landscape plan; depiction of critical area, critical area buffer and building setback, and Native Growth Protection Easement (NGPE) on the final plat map; City indemnity for development within 50 feet of steep slopes; compliance with an approved Development Agreement; establishment of a homeowners association for maintenance of shared common areas; affordable housing provision; payment of impact fees; and conditions required by the City Public Works Engineering Department, Fire Department, and Parks Department. *The Hearing Examiner recommends that the City Council consider additional conditions appropriate to ensure adequate construction vehicle access, safe pedestrian access, vehicle access to subdivision homes, and adequate construction and resident parking. The Hearing Examiner also recommends that the City Council consider including a clause within the Development Agreement providing for support of the Talus Park and trail system by the homeowners association to be established for the proposed subdivision, if residents of the proposed subdivision are allowed to use the Talus Park and trail system. Findings 1, 3, 7 – 12, 20 – 30, 32 – 37.*

### RECOMMENDATION

Based on the preceding Findings and Conclusions, the Hearing Examiner recommends that the request for a preliminary plat and clustered housing development agreement to subdivide

approximately 13.9 acres into 24 single family lots with nine tracts for native growth protection easements, common open space, stormwater detention, and future development be **APPROVED**, subject to the following conditions:

1. The Applicant shall comply with the SEPA Mitigated Determination of Nonsignificance, dated February 22, 2012. Those 4 conditions of approval are:
  1. *A construction haul route plan shall be approved by the City to minimize construction-related traffic impacts though the Talus neighborhood, prior to issuance of construction permits.*
  2. *The following measures are required to avoid project impacts to the existing MSE retaining wall along the west property boundary:*
    - 1) *The maximum trench depth should not intersect a line extended down and away from the existing MSE wall footing at a 1.5H:1V slope.*
    - 2) *Trench shoring is used and correctly installed.*
    - 3) *Maximum length of trench open at one time will be limited depending on the pipe lengths.*
    - 4) *Trench is backfilled within 8 hours of excavation.*
    - 5) *Existing underdrains that extend from the toe of the MSE wall should be exposed, and connections made to collect the water and convey it by tight line to the project stormwater collection system.*
  3. *The Applicant shall include the planting of 35 conifer trees in the slope area along the east part of the site on the project landscape plan. The planting shall be installed prior to final plat approval.*
  4. *The Applicant should mitigate for potential impacts on public services with a voluntary contribution in the amount of \$130.32 per new single-family residence for the General Government Buildings Mitigation Fee, and \$166.81 per new single-family residence for the Police Mitigation Fee. The Applicant should pay the voluntary contribution prior to issuance of building permits.*
2. The Final Plat of Forest Heights shall place on the plat drawing, the protected Critical Area (steep slopes) along with the 10-foot buffer to the Critical Areas and the 15-foot building setback to the Critical Area buffer.
3. The Final Plat shall illustrate the Native Growth Protection Easement (NGPE), the 10-foot buffer to the NGPE, and the 15-foot building setback to the NGPE buffer. The Final Plat shall include the following language that defines the Native Growth Protection Easement for the steep slope area:

*The Native Growth Protection Easement (NGPE) conveys to the public a beneficial interest in the land within the NGPE. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract imposes upon all present and future owners and occupiers of the land subject to the tract the obligation, enforceable on behalf of the public by the City of Issaquah, to leave*

*undisturbed all trees and other vegetation within the tract. The vegetation within the tract may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the City of Issaquah or its successor agency, unless otherwise provided by law. The City, when permitting the cutting, pruning or removal of living or dead vegetation, shall consider demonstrated health and safety concerns.*

4. Because the steep slope buffer has been reduced from 50 feet to 10 feet, the Applicant shall execute an agreement entitled "Covenant Not to Sue – Slide Prone Areas" which indemnifies and holds the City harmless for development within 50 feet of the steep slopes (IMC 18.10.580-4-b).
5. New homes on the lots must meet the development standards for setbacks with the Development Agreement as approved by the Development Agreement. Impervious and pervious surface area on the individual lots is not regulated. Building Heights for houses shall comply with the Development Standards of the Land Use Code.
6. The Final Plat drawings shall clearly identify the various tracts on property in written language and shall clearly state specifically what the tracts are for and who will be responsible for the maintenance of such tracts.
7. A Homeowners Association shall be set up for the establishment and maintenance of shared common areas within Forest Heights.
8. As part of the Development Agreement, a minimum of one (1) affordable home meeting City eligibility criteria shall be provided within Forest Heights. The City definition in IMC18.02 of "Affordable Housing, Low income group & Moderate income group" for a family earning between zero (0) and eighty (80) percent of the King County Median Household Income.
9. The new residential development associated with the Forest Heights subdivision will have an impact on the Parks, Fire protection, General Government, Police and Schools servicing this area. The impact fees for these items will be determined and due when building permits are issued for new single family houses on each of those lots. General Government and Police services were determined by the SEPA Mitigated Determination of Nonsignificance (MSDS).
10. All storm facilities shall be in compliance with the 1998 King County Surface Water Design Manual (KCSWDM) as adopted by the city that was in effect at the time the Preliminary Plat application submittal was made.
11. Per Issaquah City Municipal Code Chapter 12.32, contractor shall provide and install conduit for cable television. Provide a note on the construction drawings to indicate the required work.
12. All existing and new overhead utilities (power, telephone, CATV, etc.) shall be constructed underground along and through the project site.
13. Geotechnical report will be required.
14. Water mains shall be designed and installed to meet water quality and fire capacity requirements of the City of Issaquah 2002 Water System Plan Update. The system will require a fire flow of 1000

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gpm for single family homes, with a max velocity of 7 ft/sec and will require a minimum 35 PSI to all upper floors.

15. City of Issaquah Water, Sewer and Street Standards are available for purchase at the Public Works Engineering front desk. They are also available on the City's website.
16. Street shall be designed to meet the City of Issaquah Street Standards.
17. NW James Bush Road shall be gated for emergency access only.
18. The roadway improvements shall be at least 10 feet from the wall.
19. At time of construction submittal the following civil drawings shall be submitted as part of the application for a Public Works Permit:
  - a. Stormwater drainage (1998 KCSWDM) and temporary erosion and sediment control (TESC) submittals meeting the requirements of Chapter 2 of the 2009 City of Issaquah Addendum to the 2009 King County Surface Water Design Manual and IMC Chapter 13.28 and 16.30. A preliminary drainage plan and Technical Information Report may be required for the Planning Permit.
  - b. Clearing and grading plans meeting IMC Chapter 16.28.
  - c. Water and sewer plan and profile drawings meeting City of Issaquah Standards.
  - d. Frontage and/or Right of Way improvement design drawings meeting City of Issaquah Standards.
  - e. All civil drawings shall be stamped and signed by a professional civil engineer.
20. Fire Department access shall be a minimum of 20 feet wide. No parking in streets will be allowed. "No Parking - Fire Lane" signs will be installed throughout the development on both sides of the streets unless streets are made wider to allow parking and also maintain a 20 feet wide fire department access.
21. Please provide a stamped letter from a Washington State licensed engineer stating the entrance road to the development (off of Big Tree Drive NW) has been constructed so no part of that road exceeds 15 %. Please provide this letter to the Fire Department when sub-grade is in place.

If letter is not received and it is found out at a later date the road does exceed 15% ( this means at any point) fire sprinklers will be required to be installed in the homes regardless of the square footage of the home.
22. A foundation soils report by a licensed WA state geotechnical engineer will be required at the time of building permit submittal. A peer review of the submitted soils report by a second engineer may be required on this site due to evidence of landslide hazard.


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23. Structures over 5000 sq. ft. shall have fire sprinklers installed per NFPA 13-D and Eastside Fire & Rescue requirements. Submit for Fire permit.
24. Exterior walls shall be fire-resistance rated and have opening protection as required by the International Residential Code as amended by WA State.
25. A tree risk assessment shall be done on the NGPE portions of the property. This would benefit the future homeowners, abutting properties and streets by mitigating any significant tree risks up front.
26. A final landscaping plan shall be approved by the City Planning Department prior to implementation.

The following additional conditions are recommended for consideration by the City Council:

27. *The plat shall be revised to provide easement access for residents of lots within Talus supported by existing retaining walls so those lot owners may enter onto the property below the retaining walls to maintain the walls, to the extent required for safe support of the Talus property.*
28. *NW James Bush Road shall be used for construction haul traffic, unless the Applicant can show use of this road is not physically feasible for equipment and the City Planning Department approves an alternate route. If NW James Bush Road is designated the construction haul route, then construction workers should be encouraged to park offsite, avoiding NW James Bush Road and existing Talus roads.*
29. *Prior to use NW James Bush Road for construction vehicles, the Applicant shall construct a pedestrian pathway along one side of NW James Bush Road, within City ROW, segregated from the roadway. Funds used for this purpose may be deducted from traffic impact fees otherwise due from the Applicant.*
30. *The Development Agreement shall contain a clause providing for support of the Talus Park and trail system by the homeowners association to be established for the proposed subdivision, if residents of the proposed subdivision will be allowed access to the Talus Park and trail system.*

Decided this 12<sup>th</sup> day of April 2012.

  
THEODORE PAUL HUNTER  
Hearing Examiner  
Sound Law Center

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